

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF REVENUE ADMINISTRATION**

**IN THE MATTER OF THE PETITION OF**

**Mr. XYZ Trust 1**

**and**

**Mr. XYZ Trust 2**

**FOR A DECLARATORY RULING**

**REDACTED DOCUMENT**

**Document #12437      Effective 12-18-2017**

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*Pursuant to RSA 541-A:1, V and RSA 541-A:16, II(b) and N.H. Code of Admin. Rules Rev 209.01, the Petitioners request a declaratory ruling with respect to Real Estate Transfer Tax.*

*Pursuant to N.H. Code of Admin. Rules Rev 209.02, this declaratory ruling is issued to the Petitioners with respect to the particular circumstances and facts discussed herein and represents a holding of the department on those circumstances and facts for Petitioners only.*

**FACTS PRESENTED BY THE PETITIONERS**

Mr. XYZ Trust 1 (the “Revocable Trust” as termed by the Petitioners) is a revocable grantor trust, taxed federally under the social security number of the grantor, Mr. XYZ. Mr. XYZ is the grantor and trustee of the Revocable Trust, and is the sole beneficiary of the trust during his life. The spouse and children of Mr. XYZ will become the trust beneficiaries upon his death.

The Revocable Trust is the sole member of certain New Hampshire limited liability companies: (1) First, LLC (“First”); (2) Second, LLC (“Second”); and (3) Third, LLC (“Third”, and collectively with First and Second, the “Companies”). Each of the Companies owns real estate located in the State of New Hampshire.

Mr. XYZ Trust 2 (the “Irrevocable Trust” as termed by the Petitioners, and collectively with the Revocable Trust, the “Petitioners”) is an irrevocable trust pursuant to RSA 564-D, which is structured as a grantor trust and will be taxed federally under the social security number of the grantor, Mr. XYZ. Mr. XYZ is the grantor of the Irrevocable Trust and his attorney is its trustee. During the life of Mr. XYZ, he will be a beneficiary of the Irrevocable Trust, along with his spouse and decedents. Upon his death, the beneficiaries will be limited to his children and issue.

The Revocable Trust will transfer its ownership of the membership interests in the Companies to the Irrevocable Trust. The Petitioners represent that the business reasons for the proposed transaction are estate planning and the funding of a qualified disposition in trust pursuant to RSA 564-D. The Petitioners further represent that no consideration will be paid in connection with this transfer.

## **DETERMINATION REQUESTED BY THE PETITIONERS**

Petitioners request the following ruling:

Under applicable New Hampshire law, no Real Estate Transfer Tax will be due in connection with the Petitioners' proposed no consideration transfer of membership interests in the LLCs from the Revocable Trust to the Irrevocable Trust.

## **REVISED STATUTES ANNOTATED (RSA) AT ISSUE**

The following New Hampshire statutes are relevant to the Petitioners' request for a declaratory ruling:

RSA 78-B:1, I(a)  
RSA 78-B:1-a, II and V

## **OTHER LAWS OR RULES**

N.H. Code of Admin. Rules Rev 209.01  
N.H. Code of Admin. Rules Rev 209.02  
N.H. Code of Admin. Rules Rev 802.02

## **PETITIONERS' REPRESENTATIONS**

To the best of the Petitioners' knowledge, the issue and the particular circumstances which are the subject of the petition:

- a. Are not under examination by the department;
- b. Have not been examined by the department;
- c. Are not under consideration by the department in connection with a return of a prior period; and
- d. Are not pending in litigation.

## **DISCUSSION**

RSA 78-B:1, I(a) provides:

[The Real Estate Transfer Tax ("RETT")] is imposed upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law. Each sale, grant and transfer of real estate, and each sale, grant and transfer of an interest in real estate shall be presumed taxable unless it is specifically exempt from taxation under RSA 78-B:2.

"Sale, granting and transfer" is defined in part as "every contractual transfer of real estate, or any interest in real estate from a person or entity to another person or entity, whether or not either person or entity is controlled directly or indirectly by the other person or entity in the transfer." RSA 78-B:1-a, V.

N.H. Code of Admin. Rules Rev 802.02(a) sets forth the New Hampshire treatment of transfers to and from revocable trusts for purposes of the RETT, and "shall have the force of law." *See* RSA 541-A:22, II. Specifically, Rev 802.02(a) provides: "Transfers to or from a revocable trust shall be classified

as a contractual transfer as defined by RSA 78-B:1-a, II.” In this instance, there is a transfer from a revocable trust, and therefore, there is a contractual transfer pursuant to Rev 802.02(a) subject to the RETT, with the amount of consideration calculated pursuant to Rev 802.02(b).

**RULING**

Based on the facts represented by the Petitioners, as well as the statutory and regulatory provisions discussed above, the department makes the following ruling:

Under applicable New Hampshire law, the Petitioners’ proposed transfer of membership interests in the LLCs from the Revocable Trust to the Irrevocable Trust is a contractual transfer subject to the RETT, with the amount of consideration calculated pursuant to Rev 802.02(b).

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Date

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Lindsey M. Stepp  
Assistant Commissioner